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SENATE BILL 307

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Gerald P. Ortiz y Pino

AN ACT

RELATING TO MUNICIPALITIES; ENACTING THE NEIGHBORHOOD
IMPROVEMENT DISTRICT ACT; PROVIDING FOR THE CREATION OF
NEIGHBORHOOD IMPROVEMENT DISTRICTS; PROVIDING FOR SPECIAL
ASSESSMENTS AGAINST PROPERTY IN A DISTRICT TO FUND IMPROVEMENTS
AND THE MAINTENANCE OF IMPROVEMENTS; PROVIDING FOR THE
INVESTMENT OF MONEY COLLECTED FROM THE ASSESSMENTS; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 13 of this act may be cited as the "Neighborhood
Improvement District Act".

Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the
Neighborhood Improvement District Act is to empower
neighborhoods to take initiative in the commencement,

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1 acquisition, construction or maintenance of those specific
2 improvements desired by the neighborhoods and that the
3 neighborhoods agree to finance by a special assessment against
4 the property benefited by the improvements.

5 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
6 Neighborhood Improvement District Act:

7 A. "council" means the governing body of the
8 municipality in which a district or a proposed district is
9 located;

10 B. "district" means a neighborhood improvement
11 district organized or proposed to be organized pursuant to the
12 provisions of the Neighborhood Improvement District Act;

13 C. "enabling ordinance" means an ordinance enacted
14 by a council pursuant to Section 5 of the Neighborhood
15 Improvement District Act that enables districts to be created
16 in the municipality and prescribes the procedures, conditions
17 and standards to be followed in creating and operating
18 districts;

19 D. "improvement" means a facility, service,
20 activity or project that will benefit a district and is
21 authorized or approved by ordinance of the council.

22 "Improvements" may include:

23 (1) services and activities, such as security
24 services, promotion of public events, concerts in public areas,
25 economic development promotions, street and sidewalk cleaning,

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1 trash removal and graffiti removal;

2 (2) public facilities, such as pocket parks,
3 open spaces, hiking and biking trails, public art, walkways,
4 pathways, public lands, public buildings, ponds, parking
5 facilities, benches, booths, kiosks, display cases, pedestrian
6 shelters, informative signs, trash receptacles, public
7 restrooms, decorations and banners;

8 (3) transportation-related facilities or
9 projects, such as streets, roads, bridges, curbs, gutters,
10 sidewalks, median strips, planting strips, speed bumps and
11 street lights; and

12 (4) the beautifying, landscaping or
13 hardscaping of any of the improvements described in Paragraphs
14 (1) through (3) of this subsection, including the use of
15 earthworks, structures, lands and other water features, plants,
16 trees and related water delivery systems;

17 E. "mayor" means:

18 (1) the mayor of a municipality that has a
19 mayor-council form of government; or

20 (2) the governing body of a municipality that
21 does not have a mayor-council form of government; and

22 F. "valuation increment funding" means a funding
23 mechanism based on an assessment applied to the increased
24 valuation of a parcel of property over a base value as
25 established in an enabling ordinance.

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1 Section 4. ~~[NEW MATERIAL]~~ ONLY PUBLIC IMPROVEMENTS
2 AUTHORIZED. -- All improvements commenced, acquired, constructed
3 or maintained pursuant to the Neighborhood Improvement District
4 Act shall be on a public right of way or public easement;
5 provided, however, that an improvement may be located on
6 private property if it directly and primarily benefits a public
7 right of way or public easement.

8 Section 5. ~~[NEW MATERIAL]~~ ENABLING ORDINANCE REQUIRED. -- A
9 district may be created in a municipality only if the council
10 has enacted an enabling ordinance specifying the procedures,
11 conditions and standards to be used in creating and operating a
12 district. The enabling ordinance:

13 A. shall specify the procedures, conditions and
14 standards, in addition to those required in the Neighborhood
15 Improvement District Act, to be followed and applied in the
16 creation of a district, including:

17 (1) acceptable purposes for a district;
18 (2) time frames for submitting petitions,
19 studying the feasibility of a proposed district, holding public
20 hearings and reaching a final decision regarding the creation
21 of a district;

22 (3) information required in a petition
23 proposing a district that will enable the council to reach a
24 decision on the necessity and benefits of the district;

25 (4) standards and procedures for determining

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1 the geographical areas for districts; and

2 (5) additional factors to be addressed in a
3 study of a proposed district;

4 B. shall specify and delineate the responsibilities
5 of a management committee of a district in establishing and
6 operating a district and the responsibilities of the
7 municipality concerning the district;

8 C. may, in addition to the petition method of
9 creating a district, provide for the creation of a district by
10 a land developer who has filed a final plat; provided that,
11 upon the sale of more than fifty percent of the lots within the
12 development, the management committee shall be appointed as
13 provided in Section 9 of the Neighborhood Improvement District
14 Act;

15 D. may, as an alternative to Section 9 of the
16 Neighborhood Improvement District Act, provide that the
17 council, rather than a management committee, shall manage a
18 district and, if so, may deduct management costs from district
19 revenue;

20 E. may, pursuant to Subsection B of Section 8 of
21 the Neighborhood Improvement District Act, provide for
22 valuation increment funding and provide how revenue accruing
23 through the valuation increment method shall be expended;

24 F. may provide how revenue received from the
25 creation of a district, including revenue from assessments,

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1 valuation increment revenues or increased gross receipts tax
2 revenues, shall be expended;

3 G. may provide for improvements to be jointly
4 commenced, acquired, constructed or maintained by both a
5 district and the municipality;

6 H. may provide for improvements to be owned by the
7 municipality, by the district or jointly between the
8 municipality and the district;

9 I. may provide for assessments of a district to
10 include a charge to establish a reserve fund for the purpose of
11 making emergency expenditures consistent with the purpose of
12 the district;

13 J. shall provide procedures for collecting
14 assessments from owners of parcels within a district and
15 procedures for foreclosing on the property of delinquent
16 payers; and

17 K. may contain such other procedures, conditions or
18 standards for districts as are consistent with the provisions
19 of the Neighborhood Improvement District Act.

20 Section 6. [NEW MATERIAL] DISTRICT-- CREATION-- PETITION--
21 STUDY. --

22 A. The majority of the owners of the taxable
23 parcels of real property within a proposed district, exclusive
24 of real property owned by the United States, the state or any
25 of its subdivisions, may petition the council for the creation

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1 of a district. The petition shall include:

2 (1) the proposed boundaries of the district;

3 (2) a general description of the initial
4 improvements to be commenced, acquired or constructed by the
5 proposed district;

6 (3) the estimated costs of the proposed
7 improvements;

8 (4) the estimated initial annual assessment
9 and the four subsequent annual assessments against each parcel
10 within the proposed district;

11 (5) the maximum amount of benefit estimated to
12 be conferred on each parcel of land lying within the proposed
13 district; and

14 (6) such other information as identified in
15 the enabling ordinance as necessary for the proper evaluation
16 of the petition.

17 B. After receipt of a petition by the council, the
18 mayor shall cause to be prepared and submitted to the council a
19 study of the proposed district. The study shall include:

20 (1) the estimated costs of the proposed
21 improvements;

22 (2) considering the property that will
23 primarily benefit from the improvements, a conclusion of
24 whether the proposed boundaries of the district are reasonable
25 and, if not, a recommendation for alternative district

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1 boundaries;

2 (3) the estimated initial annual assessment
3 and the four subsequent annual assessments against each parcel
4 within the district;

5 (4) additional considerations and information
6 required by the enabling ordinance; and

7 (5) such other information as the council
8 needs in order to determine whether the creation of the
9 district is in the best interests of the residents and property
10 owners of the district.

11 Section 7. [NEW MATERIAL] DISTRICT--CREATION--PUBLIC
12 HEARING. --

13 A. After receipt of the study pursuant to Section 6
14 of the Neighborhood Improvement District Act, the council shall
15 hold a public hearing on the proposed district.

16 B. Notice of the hearing shall be mailed to
17 affected real property owners within the proposed district and
18 reasonably ascertainable residents of the proposed district and
19 other interested persons. In addition, notice shall be
20 published once each week for three successive weeks in a
21 newspaper of general circulation in the municipality in which
22 the proposed district lies, with the last publication being at
23 least three days before the date of the hearing. The notice
24 shall contain:

25 (1) the time and place of the hearing;

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1 (2) the initial improvements proposed for the
2 district;

3 (3) the estimated cost of the improvements;

4 (4) the proposed boundaries of the district;

5 and

6 (5) a preliminary estimate of the initial
7 assessments that will be made against each parcel of real
8 property in the district.

9 C. A resident, real property owner or other
10 interested person shall be given the opportunity to appear at
11 the public hearing and present views on the creation of the
12 district as proposed in the notice.

13 D. Upon completion of the hearing, the council
14 shall adopt an ordinance creating the district or shall reject
15 the creation of the district.

16 E. If the creation of a district is rejected by the
17 council, another petition for creation of the district shall
18 not be submitted pursuant to the Neighborhood Improvement
19 District Act within twelve months following the rejection.

20 Section 8. [NEW MATERIAL] DISTRICT-- CREATION--
21 ORDINANCE. --

22 A. An ordinance creating a district shall be
23 consistent with the enabling ordinance and shall include:

24 (1) a list of the initial improvements to be
25 provided by the district;

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- 1 (2) the cost of the initial improvements;
- 2 (3) a description of the real property
- 3 included in the district;
- 4 (4) the assessment method to be used to
- 5 finance improvements of the district;
- 6 (5) the amount of the initial assessment to be
- 7 imposed upon each real property owner and an estimate of
- 8 assessments for the subsequent four tax years;
- 9 (6) a description of how the district will be
- 10 managed and, if the district is to be managed by a managing
- 11 committee, the terms of members, method of appointment,
- 12 reporting requirements and other duties of the management
- 13 committee; and
- 14 (7) a description of the methods to be used to
- 15 account for district costs and revenues and how district
- 16 revenues will be disbursed to the district for improvements and
- 17 the maintenance of improvements.

18 B. If permitted in the enabling ordinance, the
19 ordinance may provide for valuation increment funding of the
20 district pursuant to the following procedures:

- 21 (1) upon approval of a district, the
- 22 municipality shall notify the county assessor and the taxation
- 23 and revenue department of the approval and of the
- 24 identification of the parcels of real property within the
- 25 district subject to taxation under the Property Tax Code;

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1 (2) upon receipt of notification pursuant to
2 Paragraph (1) of this subsection, the county assessor and the
3 taxation and revenue department shall identify the parcels of
4 property within the district within their respective valuation
5 jurisdictions and at the time tax rates are certified under the
6 Property Tax Code shall certify to the county treasurer the net
7 taxable value of the property as of January 1 of the year in
8 which the notification was made. This certified value is the
9 "base value" for the distribution of property tax revenues
10 authorized by the Property Tax Code under the valuation
11 increment method;

12 (3) the amount by which the general property
13 tax revenue received from the tax on property within a district
14 exceeds that which would have been received by application of
15 the same rates to the base value before inclusion in the
16 district shall be credited to the municipality and used as
17 provided in the enabling ordinance and the ordinance creating
18 the district. The remaining revenue shall be distributed to
19 participating units of government as authorized by the Property
20 Tax Code; and

21 (4) the procedures and methods specified in
22 this subsection shall be followed annually for an initial
23 period of five years following the date of notification of
24 inclusion of property as coming under the provisions of this
25 subsection and for any subsequent five-year periods that are

1 established by ordinance of the council.

2 Section 9. [NEW MATERIAL] MANAGEMENT COMMITTEE--
3 CREATION-- DUTIES. --

4 A. For a district with a management committee, the
5 committee shall be responsible for the operation of a district,
6 including the commencement, acquisition, construction or
7 maintenance of district improvements. The members of the
8 management committee shall be appointed pursuant to the
9 provisions of the enabling ordinance and the ordinance creating
10 the district; provided, however, that one member shall be
11 appointed by and represent the mayor and the remaining members
12 shall be real property owners or residents of the district.

13 B. The management committee shall prepare and file
14 annually with the council for its review and approval a budget
15 and progress report for the district.

16 C. The management committee shall administer all
17 improvements within the district.

18 D. The management committee shall recommend the
19 annual assessment to be made by the council.

20 E. The management committee shall file annually
21 with the council a report of the district activities for the
22 preceding fiscal year, which report shall include a complete
23 financial statement setting forth its assets, liabilities,
24 income and operating expenses as of the end of the fiscal year
25 and the benefits of the district's program to the real property

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1 owners of the district.

2 F. The management committee shall be a nonprofit
3 corporation created pursuant to the Nonprofit Corporation Act.

4 Section 10. [NEW MATERIAL] ADDITIONAL IMPROVEMENTS. --

5 A. The initial improvements authorized in the
6 ordinance creating the district may be commenced, acquired,
7 constructed or maintained by the management committee, and the
8 council may approve assessments for such improvements and the
9 maintenance thereof, including assessments for increased costs
10 necessary to adjust for inflation, to maintain an existing
11 level of service, to correct faults, to make repairs and to
12 meet future regulatory requirements.

13 B. Except as allowed in Subsection A of this
14 section, no additional improvements shall be made, no
15 additional costs shall be incurred and no additional
16 assessments shall be issued by the district unless a petition,
17 signed by a majority of the owners of the taxable parcels of
18 real estate within the district and requesting the additional
19 improvements or costs and the associated assessments, is filed
20 with the council.

21 Section 11. [NEW MATERIAL] ANNUAL ASSESSMENT-- SPECIAL
22 ACCOUNT-- DISTRIBUTION. --

23 A. The council, upon recommendation of the
24 management committee, may periodically assess a neighborhood
25 improvement benefit fee upon all real property, exclusive of

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1 any real property owned by the United States or the state or
2 any of its political subdivisions, located within the district.
3 The council may make reasonable classifications regarding real
4 property owners located within the district but the assessment
5 shall be based on the taxable valuation distributed by the
6 county assessor. The assessment shall be collected by the
7 treasurer of the county in which the district is located and
8 shall be in addition to any other municipal-imposed license
9 fees or other taxes, fees or other charges assessed or levied
10 for the general benefit and use of the municipality.

11 B. All money received by the municipality from the
12 district assessment shall be held in a special account and
13 distributed as provided in the enabling ordinance and the
14 ordinance creating the district.

15 C. The money held for the benefit of the district
16 shall be distributed to the management committee pursuant to rules
17 and guidelines established by the council.

18 Section 12. [NEW MATERIAL] ASSESSMENTS--TERMS OF PAYMENT--
19 LIENS--FORECLOSURE.--

20 A. The council shall by ordinance:

21 (1) establish the time and terms of paying the
22 neighborhood improvement benefit fee or installments on the fee;

23 (2) set any rate or rates of interest upon
24 deferred payments of the fee, which shall commence from the due
25 date as prescribed in the ordinance;

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1 (3) fix penalties to be charged for delinquent
2 payment of an assessment;

3 (4) establish procedures and guidelines for the
4 classification of property for the fee;

5 (5) set a reasonable charge to recover the
6 municipality's expense for the assessment, collection and
7 administration of the fee; and

8 (6) provide for the control and investment and
9 order the expenditure of all money pertaining to the district.

10 B. The assessment, together with any interest or
11 penalty accruing to the assessment, is a lien upon the parcel of
12 land. The lien is coequal with the lien for property taxes.

13 C. Within sixty days after the due date for the
14 payment of an assessment, the mayor shall record in the office of
15 the county clerk a claim of lien for any unpaid amount due and
16 assessed against a parcel of land.

17 D. A parcel assessed shall not be relieved from the
18 assessment or lien by the sale of the parcel of land for general
19 taxes or any other assessment. A delinquent assessment has the
20 effect of a mortgage and shall be foreclosed and sold in the
21 manner provided by law for the foreclosure of mortgages on real
22 estate.

23 Section 13. [NEW MATERIAL] DISTRICT REVIEW. -- The council
24 shall review each district every five years to determine whether
25 the district should remain in existence. If a majority of the

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1 council decides that the purpose for which the district was
2 created has been served and that it is in the best interest of the
3 district, the council shall terminate the district. If upon
4 termination of a district there is an outstanding balance in the
5 district's account, the council shall expend or refund the balance
6 in a manner that benefits the real property owners in the
7 district.

8 Section 14. Section 6-10-10.1 NMSA 1978 (being Laws 1988,
9 Chapter 61, Section 2, as amended) is amended to read:

10 "6-10-10.1. SHORT-TERM INVESTMENT FUND CREATED--DISTRIBUTION
11 OF EARNINGS--REPORT OF INVESTMENTS.--

12 A. There is created in the state treasury the "short-
13 term investment fund". The fund shall consist of all deposits
14 from governmental entities and Indian tribes or pueblos that are
15 placed in the custody of the state treasurer for short-term
16 investment purposes pursuant to this section. The state treasurer
17 shall maintain a separate account for each governmental entity and
18 Indian tribe or pueblo having deposits in the fund.

19 B. If a local public body is unable to receive payment
20 on public money at the rate of interest as set forth in Section
21 6-10-36 NMSA 1978 from financial institutions within the
22 geographic boundaries of the governmental unit, then a local
23 public finance official having money of that local public body in
24 [~~his~~] the official's custody not required for current expenditure
25 may, with the consent of the appropriate local board of finance,

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1 if any, remit some or all of such money to the state treasurer for
2 deposit for the purpose of short-term investment as allowed by
3 this section.

4 C. Before local funds are invested or reinvested for
5 the purpose of short-term investment pursuant to this section, the
6 local public body finance official shall notify and make such
7 funds available to banks, savings and loan associations and credit
8 unions located within the geographical boundaries of their
9 respective governmental unit, subject to the limitation on credit
10 union accounts. To be eligible for such funds, the financial
11 institution shall pay to the local public body the rate
12 established by the state treasurer pursuant to a policy adopted by
13 the state board of finance for such short-term investments.

14 D. The local public body finance official shall
15 specify the length of time a deposit shall be in the short-term
16 investment fund, but in any event the deposit shall not be made
17 for more than one hundred eighty-one days. The state treasurer
18 through the use of the state fiscal agent shall separately track
19 each such deposit and shall make such information available to the
20 public upon written request.

21 E. The state treasurer shall invest the short-term
22 investment fund as provided for state funds under Section 6-10-10
23 NMSA 1978 in investments with a maturity at the time of purchase
24 that does not exceed three hundred ninety-seven days. The state
25 treasurer may elect to have the short-term investment fund

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1 consolidated for investment purposes with the state funds under
2 the control of the state treasurer; provided that accurate and
3 detailed accounting records are maintained for the account of each
4 participating entity and Indian tribe or pueblo and that a
5 proportionate amount of interest earned is credited to each of the
6 separate government accounts. The fund shall be invested to
7 achieve its objective, which is to realize the maximum return
8 consistent with safe and prudent management.

9 F. At the end of each month, all net investment income
10 or losses from investment of the short-term investment fund shall
11 be distributed by the state treasurer to the contributing entities
12 and Indian tribes or pueblos in amounts directly proportionate to
13 the respective amounts deposited in the fund and the length of
14 time the amounts in the fund were invested. The state treasurer
15 shall charge participating entities, Indian tribes and pueblos
16 reasonable audit, administrative and investment expenses to be
17 paid directly from their net investment income for the investment
18 and administrative services provided pursuant to this section.

19 G. As used in this section, "local public body" means
20 a political subdivision of the state, including school districts
21 and post-secondary educational institutions.

22 H. In addition to the deposit of funds of local public
23 bodies, the state treasurer may also accept for deposit, deposit
24 and account for, in the same manner as funds of local public
25 bodies, funds of the following governmental entities if the

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1 governing authority of the entity approves by resolution the
2 deposit of the funds for the short-term investment:

3 (1) the agricultural commodity commission
4 established under the Agricultural Commodity Commission Act;

5 (2) the Albuquerque metropolitan arroyo flood
6 control authority established under the Arroyo Flood Control Act;

7 (3) the business improvement district management
8 committee established under the Business Improvement District Act;

9 (4) the New Mexico community development council
10 established under the New Mexico Community Assistance Act;

11 (5) the governing authority of only special
12 districts authorized under Chapter 73 NMSA 1978;

13 (6) the board of trustees established under the
14 Economic Advancement District Act;

15 (7) the board of directors of a corporation or
16 foundation established under the Educational Assistance Act;

17 (8) a board of directors established under the
18 Flood Control District Act;

19 (9) the New Mexico hospital equipment loan
20 council established under the Hospital Equipment Loan Act;

21 (10) the authority established under the
22 Industrial and Agricultural Finance Authority Act;

23 (11) the authority established under the Las
24 Cruces Arroyo Flood Control Act;

25 (12) the authority established under the Mortgage

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1 Finance Authority Act;

2 (13) the authority established under the
3 Municipal Mortgage Finance Act;

4 (14) the authority established under the Public
5 School Insurance Authority Act;

6 (15) the authority established under the Southern
7 Sandoval County Arroyo Flood Control Act;

8 (16) a board of trustees established under the
9 Special Hospital District Act;

10 (17) the authority established under the
11 New Mexico Finance Authority Act; [~~and~~]

12 (18) the corporation established under the Small
13 Business Investment Act; and

14 (19) a neighborhood improvement district
15 management committee established under the Neighborhood
16 Improvement District Act.

17 I. In addition to the deposit of funds of local public
18 bodies, the state treasurer may also accept for deposit and
19 deposit and account for, in the same manner as funds of local
20 public bodies, funds of any Indian tribe or pueblo in the state if
21 authorized to do so under a joint powers agreement executed by the
22 state treasurer and the governing authority of the Indian tribe or
23 pueblo under the provisions of the Joint Powers Agreements Act. "